S.B.CIVIL WRIT PETITION NO.116/2004.

District Education Officer (Elementary Education), Banswara & Another. v. Prabhu Lal and Another)

DATE OF ORDER: 8.4.2005

PRESENT.

HON'BLE MR. JUSTICE R.P.VYAS

Miss Kusum Rao, for Petitioners.

This writ petition has been filed by the petitioners with a prayer that the impugned award dated 3.11.2001 (Annexure 7), passed by the Judge, Industrial Disputes Tribunal and Labour Court, Udaipur may be quashed and set aside.

Brief facts giving rise to the instant petition are that on a reference made on 24.5.1999, the matter came for adjudication before the Labour Court, Udaipur. Respondent No. 1 – Prabhulal submitted his claim before the Labour Court mentioning therein that he was engaged as Jaldhari w.e.f. 1.1.1992. He further submitted that he discharged the duties of opening school, cleaning school, filling water, ringing bell and closing school. He also submitted that despite working full time, he was only paid Rs.75/- per month. He was given assurance that hie services will be regularised as Class IV employee. Despite working for a period of 5 years, his services were not regularised. Therefore, he preferred a writ petition, being S.B.Civil Writ Petition No.4231/1996, which was dismissed vide order dated 11.6.1999

(Annexure 1), on the ground of alternative remedy.

In support of his claim, Prabhulal – respondent No.1 filed an affidavit dated 29.4.2000 (Annexure 2). The petitioners filed reply (Annexure 3) and submitted that there was no sanctioned post of Jaldhari, therefore, services of respondent No.1 could not be regularised as Class IV servant. Apart from that, respondent No.1 was paid out of the contingency fund made available with the petitioners. Respondent No.1 worked specifically for a period of one hour to fill two pots of water for which he was paid Rs.75/- per month. No assurance was given to him . Neither any post of Class IV is available with the petitioner, nor there is any sanction. He did not work for one and a half month during summer vacation. Therefore, he did not work continuously for a period of 240 days in one calendar year. As respondent No.1 was appointed on part time basis, he does not fall under the definition of workman and the provisions of the Industrial Disputes Act, 1947 are not attracted.

Thereafter, petitioners No. 1 and 2 filed their affidavits dated 17.2.2001 (Annexure 4), 22.2.2001 (Annexure 5) and 16.3.2001 (Annexure 6) respectively.

After hearing both the parties, learned Labour Court, Udaipur passed award dated 3.11.2001 (Annexure 6) and a sum of Rs.11,750/- was awarded to respondent No.1 by way of compensation.

Aggrieved by the order dated 3.11.2001 (Annexure 6), the

instant petition has been filed.

I have heard the learned counsel for the petitioners at length and scrutinised and scanned the material available on record.

The learned Labour Court has recorded a findings of facts on the basis of material available on record that respondent-Prabhula has completed 240 days in a calendar year.

In my considered opinion, the findings of facts recorded by the Labour Court are based on correct appreciation of entire evidence and material available on record and it cannot be said that the findings of the Labour Court are erroneous or perverse or patently unreasonable or based on no material on record. The findings of facts recorded by the Labour Court do not suffer from any basic illegality or infirmity.

Apart from that, under Article 227 of the Constitution of India, the High Court cannot interfere with the exercise of the discretionary power vested in the inferior Court or Tribunal, unless its findings are clearly perverse or patently unreasonable. While exercising the powers under Article 227 of the Constitution of India, the High Court dos not act as Court of appeal.

From perusing the award dated dated 3.11.2001 (Annexure 7), passed by the learned Labour Court, it does not reveal that there is patent illegality and irregularity or error of law apparent on the fact of record and the findings recorded by the learned Labour Court are perverse.

During the course of arguments, it is submitted by the learned counsel for the petitioners that the instant petition is squarely covered by the order of this Court passed in S.B.Civil Writ Petition No.1035/2005 (State and Others v. Prakash Chandra) on 23.2.2005.

Accordingly, the writ petition lacks merit and is hereby dismissed in terms of the order dated 23.2.2005 passed in S.B.Civil Writ Petition No.1035/2005 (State and Others v. Prakash Chandra). There will be no order as to costs.

(R.P.VYAS), J.

scd